

Lizeth Marin, OSB #185269

lizeth@nwjp.org

Corinna Spencer-Scheurich, OSB #130147

corinna@nwjp.org

Northwest Workers' Justice Project

812 SW Washington St, Suite #225

Portland, OR 97205

Telephone: (503) 525-8454

Facsimile: (503) 946-3029

D. Michael Dale, OSB #771507

michaeldale@dmichaeldale.net

Law Office of D. Michael Dale

P.O. Box 1032

Cornelius, OR 97113

Telephone: (503) 730-1706

Facsimile: (503) 946-3089

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

JACINTO GONZALEZ, and **PAULA GONZALEZ**, individuals,

Case No.:

Plaintiffs,

COMPLAINT

v.

NW CASCADE PAINTING, LLC, a
domestic limited liability company,
d.b.a. Cascade Painting and Cleaning

Defendants.

Fair Labor Standards Act
(29 U.S.C. §§ 201 *et seq.*),
Oregon Wage and Hour Laws
O.R.S. §§ 653.025, 653.055,
652.140, 652.150, 652.200,
and 653.261,
Washington Wage and Hour Laws
R.C.W. §§ 49.46.020, 49.46.090,
49.46.130, 49.48.010, 49.52.050,
49.52.070, and 49.46.130

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. Jacinto Gonzalez and Paula Gonzalez (collectively, “Plaintiffs”) bring this action against NW Cascade Painting, LLC doing business as Cascade Painting and Cleaning (“Defendant”) seeking unpaid wages due to them under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, (FLSA).

2. Plaintiffs also seek unpaid wages, penalty damages, and attorneys’ fees for violations of Oregon wage and hour law under O.R.S. §§ 653.025, 653.055, 652.140, 652.150, 652.200 and 653.261.

3. In the alternative, under Washington wage and hour law, Plaintiffs seek unpaid wages, liquidated damages, and attorney fees under R.C.W. §§ 49.46.020, 49.46.090, 49.46.130, 49.48.010, 49.52.050, 49.52.070, and 49.46.130.

II. JURISDICTION

4. Jurisdiction is conferred on this court by 29 U.S.C. § 216(b), as this action arises under the FLSA, 29 U.S.C. §§ 201, *et seq.*; 28 U.S.C. § 1331, as this action arises under the laws of the United States, and 28 U.S.C. § 1337, as it arises under acts of Congress regulating commerce.

5. Pursuant to 28 U.S.C. § 1367, this court has supplemental jurisdiction of the claims based on Oregon law, as they are so related to claims within the Court’s original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

6. Venue is proper in the District of Oregon pursuant to 28 U.S.C. § 1391(b)(1),(2) because Multnomah County is where Defendant resides and is in the district of the events giving rise to Plaintiffs’ claims.

III. PARTIES

7. Jacinto Gonzalez and Paula Gonzalez are natural persons who were employed by NW Cascade Painting, LLC in Portland, Oregon in Multnomah County.

8. At all times relevant to this action, Defendant NW Cascade Painting, LLC (“Cascade Painting”) was a domestic limited liability corporation operating a construction business in Oregon and Washington. Its principal place of business is in Multnomah County, Oregon.

IV. FACTS

9. Defendant recruited and employed Jacinto Gonzalez and Paula Gonzalez in Oregon from September 2019 through November 2019 to prepare and paint a home in Ridgefield, Washington (“Project”).

10. Defendant Cascade Painting is in the business of painting residential and commercial buildings, such as the one involved in the Project.

11. Painting and related labor is an integral part of the business of painting buildings, such as the one involved in the Project.

12. Plaintiffs were recruited and filled out their applications in Oregon.

13. On a weekly basis Plaintiff Jacinto Gonzalez, would be asked to pick up materials from Portland, Oregon and drive them to the “Project”.

14. Plaintiffs were not paid for their gas expenses.

15. Plaintiffs received their paychecks in Portland, Oregon.

16. Among other weeks from September 28, 2019, to October 4, 2019, Plaintiff Jacinto Gonzalez worked 38.98 hours in overtime hours and was not paid any overtime premium.

17. Defendant regularly willfully failed to compensate Plaintiff Jacinto Gonzalez at a rate of time and one-half for every hour worked over 40.

18. Among other weeks from October 5, 2019, to October 11, 2019, Plaintiff Paula Gonzalez worked approximately 79.62 hours.

19. Plaintiff Paula Gonzalez was paid approximately \$500.00 for this work.

20. Defendant willfully failed to pay Plaintiff Paula Gonzalez Oregon minimum wage for Portland Metro workers of \$12.50 an hour, or in the alternative the Washington minimum wage of \$12.00 an hour, and the federal minimum wage of \$7.25 per hour.

21. Among other weeks from October 26, 2019, to November 1, 2019, Plaintiff Paula Gonzalez worked 33.33 hours in overtime hours and was not paid any overtime premium.

22. Defendant regularly willfully failed to compensate Plaintiff Paula Gonzalez at a rate of time and one-half for every hour worked over 40.

23. Plaintiffs' employment was terminated in approximately November 2019.

24. Defendant willfully failed to pay Plaintiffs all of their wages upon termination.

25. On September 8, 2020, Plaintiffs, through their lawyers, made written demand to Defendant to be paid their unpaid and due wages in full.

26. Defendant has failed, despite repeated requests by Plaintiffs, to pay Plaintiffs all wages earned.

V. CLAIMS FOR RELIEF

First Claim – Violation of FLSA

27. Defendant violated 29 U.S.C. § 206 when they failed to pay Plaintiff Paula Gonzalez the minimum wage rate for all the hours worked.

28. Defendant violated 29 U.S.C. § 207 when they failed to pay Plaintiffs overtime wages for work performed for Defendant in excess of forty hours per work week.

29. Pursuant to 29 U.S.C. § 216(b), Plaintiffs are entitled to recover unpaid minimum wage and overtime wages, equal amounts as liquidated damages, and attorneys' and costs.

Second Claim – Violation of Oregon Minimum Wage and Overtime Law

30. Defendant failed to pay Plaintiff Paula Gonzalez at the Oregon minimum hourly rate for all hours worked in violation of O.R.S. § 653.025.

31. Defendant violated O.R.S. § 653.261 and its implementing regulations when they failed to pay Plaintiffs overtime wages at a rate of time and one-half their hourly wage rate for all hours worked for Defendant in excess of forty hours per work week.

32. Plaintiffs are entitled under O.R.S. § 653.055 to recover the unpaid wages, penalty damages in an amount equal to 240 times their hourly rate, and reasonable attorneys' fees and costs for non-payment of minimum and overtime wages.

Third Claim – Violation of Oregon Timely Payment of Wages Law

33. Defendant failed to pay Plaintiffs all of their wages due upon termination of their employment within the time specified in O.R.S. § 652.140.

34. Defendant's failure to pay Plaintiffs all of their wages upon termination of employment was willful.

35. Plaintiffs are entitled under O.R.S. § 652.150 to recover penalty damages in an amount equal to 240 times their hourly rate, plus reasonable attorneys' and costs for Defendant's failure to pay Plaintiffs' wages upon termination.

Fourth Claim – In the Alternative- Violation of Washington Minimum Wage and Overtime Law

36. Defendant failed to pay Plaintiff Paula Gonzalez at the Washington minimum hour rate for all hours worked in violation of R.C.W. § 49.46.020.

37. Defendant failed to pay Plaintiffs overtime wages for work in excess of forty hours per week.

38. Defendant violations of R.C.W. § 49.46 were willful and made with the intent to deprive Plaintiffs of wages and thus give rise to the exemplary damages under R.C.W. §

49.52.050 and R.C.W. 49.52.070.

39. Pursuant to R.C.W. § 49.46.090 and R.C.W. § 49.48.030 Plaintiffs are entitled to reasonable attorneys' fees.

40. As a result of the willful, unlawful actions of the Defendant, Plaintiffs have been deprived of compensation in amounts to be determined at trial.

Fifth Claim – In the Alternative- Violation of Washington State Payment Act

41. Defendant violated R.C.W. § 49.48.010 by failing to pay all wages due when Plaintiffs ceased to work for Defendant.

42. Defendant violations of R.C.W. § 49.46 were willful and made with the intent to deprive Plaintiffs of wages and thus give rise to the exemplary damages under R.C.W. § 49.52.050 and R.C.W. 49.52.070.

43. Pursuant to R.C.W. § 49.46.090 and R.C.W. § 49.48.030 Plaintiffs are entitled to reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that the Court grant the following relief:

1. Award Plaintiff Paula Gonzalez her unpaid federal minimum wages and Plaintiffs their unpaid overtime wages pursuant to 29 U.S.C. § 206 and § 207 and liquidated damages pursuant to 29 U.S.C. § 216(b);
2. Award Plaintiff Paula Gonzalez her unpaid minimum wages pursuant to Oregon minimum wage laws, O.R.S. § 653.025;
3. Award Plaintiffs their unpaid overtime wages pursuant to Oregon overtime wages pursuant to O.R.S. § 653.261 and OAR 839-020-0030 ;
4. Award Plaintiffs penalty wages in the amount of 240 times Plaintiffs' hourly wage pursuant to O.R.S. § 653.055 for failure to pay Oregon minimum and overtime wages;

5. Award Plaintiffs' civil penalties in the amount of 240 times Plaintiffs' hourly wage pursuant to O.R.S. § 652.150 for failure to pay Plaintiffs' wages promptly upon termination;
6. In the alternative to Oregon wage law, award Plaintiff Paula Gonzalez her Washington unpaid minimum wages under R.C.W. § 49.46.020 and Plaintiffs' overtime wages under R.C.W. § 49.46.130, and award Plaintiffs 'exemplary damages under R.C.W. § 49.52.050 and R.C.W. 49.52.070.
7. Find that Plaintiffs is the prevailing party and award Plaintiffs reasonable attorneys' fees and costs, and expenses, pursuant to 29 U.S.C. § 216(b); O.R.S. §§ 653.055, and 652.200; and R.C.W. §§ 49.46.090, 49.48.030, 49.52.050, and 49.52.070.
8. Award Plaintiffs pre-judgment interest on sums due under the state law claims and post-judgment interest on all claims; and
9. Award Plaintiffs such other relief as this Court deems just and proper.

Respectfully submitted this March 8th, 2021.

/s/ Lizeth Marin
Lizeth Marin, OSB #185269
Lizeth@nwjp.org
Attorney for Plaintiffs